

such specifically disputed portion and identified amount shall be stayed pending resolution of the dispute with respect thereto. The amount of money in dispute must be identified in the manner outlined in Principle 8010.

The net amount of any over or underpayment made to the facility will be based on 1) the calculation of actual fixed expenses incurred in the prior year, and 2) the estimated difference in amount due or paid based on the interim versus final prospective rate.

Example	Department Owes	Facility Owes
1) Upon final audit of Facility A's fixed costs, the Department owes it \$1,314 (Example 2)		\$1,314
3) The difference between the interim (\$45.56) and final (\$45.48) prospective rates is \$.08. (See Examples 1 and 5). This determination is made six months into the facility's fiscal year. The Department estimates 13,140 days of care have been provided to Medicaid beneficiaries. The facility owes the Department \$1,051.20 (\$.08 x 13,140).		<u>\$1,051.20</u>
4) The amount which Facility A owes the Department is \$2,365.20.		\$2,365.20

Facility A may either pay that amount to the Department or request that its payment be reduced by that amount during the balance of its fiscal year.

## 7080 Changes in Staffing

### 7080.1 Direct Care Personnel

In the event that a facility believes that the need of the individuals it serves have increased or decreased considerably and, consequently, that an increase or decrease in the number of full time equivalent direct care staff it employs is warranted, it may request the Division of Licensure and Certification to conduct an audit of its residents and their needs. The cost associated with any additional personnel approved by the Department will be incorporated into the facility's interim adjustment rate of reimbursement. The facility must notify the Division of Audit when the approved position has been filled.

The facility will be responsible for maintaining appropriate records which the Department can audit to demonstrate the need for changes in staffing (either increases or decreases) based on the needs and changes in needs of its residents.

If the Department determines that the needs of the residents are not adequately met, it may order the facility to retain the additional personnel needed to do so.

If the Department determines that the number of direct care staff in the facility is greater than the number required to adequately serve the needs of its residents, it may adjust the facility's approved staffing pattern and its prospective rate. Any such adjustment made will not be applied on a retroactive basis; but instead will be applied as of the effective date of the adjustment.

#### 7080.2 Non-Direct Care Staff

In the event a facility believes that the needs of the residents it serves have increased or decreased or the staff of the Department of Human Services recommends an increase or decrease in non-direct care staff, the facility may request Division of Licensing and Certification to authorize such a change. The cost associated with any additional personnel approved by the Department will be incorporated into the facility's interim adjustment rate of reimbursement. The facility must notify the Division of Audit when the approved position has been filled.

The facility will be responsible for maintaining appropriate records which the Department can audit to demonstrate the need for changes in staffing (either increases or decreases) based on the needs and changes in needs of its residents.

If the Department has reason to believe that a facility has a number of full time equivalent non-nursing personnel in its employ which is greater or less than the number needed to adequately serve its residents, the Department will initiate an audit of the facility's residents.

If the Department determines that the needs of the residents are not adequately met, it may order the facility to retain the additional personnel needed to do so.

If the Department determines the number of full time equivalent non-direct care staff in the facility is greater than the number needed to adequately serve the needs of its residents, it may adjust the facility's staffing pattern and its prospective rate. Any such adjustments made will not be applied on a retroactive basis; but instead will be applied as of the effective date of the adjustment.

#### 7090 Administrator in Training

The reasonable salary of an administrator in training is an allowable expense in accordance with Section 4120 of the Principles of Reimbursement. The

approved salary of the administrator in training will be considered a one-time pass through and will not be included in the operating expenses used to calculate a subsequent year prospective rate.

#### 7095 Certified Nurses Aide Training (CNA)

The reasonable cost of Nurses Aide Training programs necessary for providing proper training to qualify individuals as Certified Nurses Aides is an allowable cost when other training programs are not meeting the need for CNA's. These programs must be conducted in accordance with the requirements of the Maine Board of Nursing for educational programs for nurses aides. To be allowable these programs must be conducted within a licensed skilled nursing or intermediate care facility within the State of Maine or under a contract with an educational institute whereby the classroom instruction may be provided in the educational facility but the supervised clinical experience must be within the licensed facility receiving the reimbursement under these principles.

Allowable costs include costs of qualified instructors for classroom instruction and supervision of clinical experience, materials, books, and supplies necessary for providing these programs. If instructors used for these programs are those that are on the facility's present approved staffing pattern then only their replacement, if any, will be considered as a cost of this training program. Tuition on a per student basis will not be allowable unless it can be established that this will result in lower costs than arranging and conducting courses by the facility. The department will reimburse for the number of courses needed to meet the facility's needs, or the basic needs of a group of facilities on a pro-rated basis, which is expected to be no more than three CNA courses per year, unless it is found that this is not enough to meet the facility's needs. However, costs for classes of four or fewer students will be allowable no more than twice a year. Reimbursement shall be allowed up to, but not to exceed, 150 hours of CNA training per person per course.

The cost per student cannot exceed the cost of tuition in a program offered through the Department of Education and Cultural Services that is reasonably accessible. If it is determined that any nurses aide training program offered by a facility has not met or does not presently meet the requirements of the Maine Board of Nursing, the Department will initiate action to recoup all costs allowed in the reimbursement rate for all courses offered after the effective date of these rules.

The costs of CNA training programs approved under this section will be considered part of the fixed cost component and will not be included in the calculation of the subsequent years prospective rate. All income received from these programs must be used to reduce the overall costs of programs. The training programs and costs must be approved by the Department of Human Services, Bureau of Medical Services before an adjustment in the per diem rate will be made. Adjustment in reimbursement may be made for courses commencing July 1, 1986 or later for those costs not previously included in the facility's base year.

**7100 New Facilities**

At the start of participation in the program, available historical data relating to a provider's costs will be received by the State of Maine Department of Human Services and an interim prospective payment rate will be established for such provider. This rate will be based on the rate approved by the Department in accordance with the provisions of the Maine Certificate of Need Act. The rate approved by the Department in accordance with the provisions of the Maine Certificate of Need Act for a facility's first year of operation will be adjusted at the time the facility opens to reflect actual inflation since the approval of the Certificate of Need. The facility's second year prospective rate will be based on the second year projected rate approved under the Maine Certificate of Need Act adjusted for actual inflation since the approval of the Certificate of Need and the current projected rate of inflation during the second year.

**7150 Transfer of Ownership**

In the case of a sale of a facility, the Department will review the new owner's Certificate of Need application and evaluate the appropriateness and reasonableness of the capital related costs as well as operating costs. The Department will establish a prospective rate for the new owner of the facility based on its analysis under the Certificate of Need process.

**7200 Extraordinary Circumstances Allowance**

Facilities which experience unforeseen and uncontrollable events during a year which result in unforeseen or uncontrollable increases in expenses, may request an adjustment to a prospective rate in the form of an extraordinary circumstance allowance. Extraordinary circumstances include, but are not limited to:

- events of a catastrophic nature (fire, flood, etc.)
- unforeseen minimum wage or Social Security increases
- changes in licensure or accreditation requirements

If the Department concludes that an extraordinary circumstance existed, an adjustment will be made by the Department in the form of a supplemental allowance.

The Department will determine from the nature of the extraordinary circumstance whether it would have a continuing impact and therefore whether the allowance should be included in the computation of the base rate for the succeeding year.

**7210 Serious Problems of Recruitment and Retention of Nursing and Direct Service Staff**

Facilities which experience serious problems in recruiting and retaining nursing and/or direct service staff may request an adjustment to their prospective rate. If the Department determines that the criteria set forth in Sections 7210.1 to 7210.9 below are met, an adjustment will be made in the form of a supplemental allowance from the time of approval and

through the first full fiscal year, and the actual expenditures from this supplemental allowance will be included in the computation of the base rate for succeeding years.

Nursing staff includes the Director of Nursing, Registered Professional Nurses, Licensed Practical Nurses and Certified Nursing Assistants. Recent graduates of nursing educational programs may be included as nursing staff pending the results of the first licensing examination available following graduation. Anyone enrolled immediately upon employment in a certified nursing assistant course to be completed within six months from the date of employment may be included as nursing staff until such time as the course is completed.

Direct service staff includes persons who are responsible for the day-to-day habilitation of the residents, including the Qualified Mental Retardation Professional, social service and activities staff, but not including housekeeping, maintenance, laundry, dietary and administrative personnel.

#### 7210.1 Documentation of staffing problems

- A. The facility must document that staffing problems exist. The following information must be submitted to meet this requirement:
  - 1. Turnover rate, as evidenced by number of FTE and number of new employees for category of staff during past six months;
  - 2. Copy of latest approved staffing pattern, as shown on form BMS LC-93;
  - 3. Length of employment of each CNA/Direct Service or member of nursing staff, or list of current employees showing date of first employment;
  - 4. Number of nursing/direct service staff hours paid at overtime rate;
- B. If applicable and available, the following information would provide additional evidence of staffing problems;
  - 1. Record of use of nursing "pool" or temporary help agencies to fill staffing needs;
  - 2. Copies of any staffing deficiencies cited by the Division of Licensing and Certification;
  - 3. Summary of employee termination interviews or reasons given for resignations.
- C. Any other information that objectively documents staffing problems will be considered.

**7210.2 Documentation of recruitment efforts**

The facility must submit a summary statement indicating what efforts have been made to recruit staff, what responses have resulted from their efforts and any other relevant information.

**7210.3 Documentation of retention incentives**

The facility must submit evidence of the incentives presently in place to encourage continued employment. To fulfill this criteria, the facility must submit the following information:

- A. Copy of salary plan, if any, including current wage scales by category of nursing staff, and direct service staff, including starting hourly wage, highest wage paid, and average hourly wage for all Employees in category (R.N., L.P.N., CNA);
- B. Fringe benefits offered including number of paid holidays, vacation days, sick days, health insurance benefits; and by whom paid (whether by employee, share by facility, etc.), and costs of fringe benefits;
- C. Bonuses, pension plans, shift differential;
- D. Historical pattern of wage increases offered by the facility to employees in each category.

**7210.4 Other relevant circumstances**

If there are any unusual circumstances impacting on the recruitment and retention of nurses and direct service/CNA's, these should be described.

**7210.5 Additional criteria to be considered**

- A. The following additional criteria will be considered by the Department in determining the need for an adjustment in the per diem rate:
  - 1. Determination of whether admissions have been curtailed due to lack of adequate staffing;
  - 2. Comparison of wage increases from base year to current year in relation to inflation as reflected in increases in per them rates;
  - 3. Review of outstanding deficiencies and action taken to correct deficiencies.
- B. The adjustment being requested will be considered in relation to data available to Health Care Audit for other facilities.

## 7210.6 Current staffing and base year

A copy of Schedule IX of the Medicaid Cost Report showing only the actual hours worked, with holiday, vacation and sick time being shown as fringe benefits, must be submitted. The costs for these benefits should be shown separately so the average wage paid would be based on hours worked. Schedule IX should be submitted for the current year and also the base year computed the same way.

## 7210.7 Adjustment being requested

The following must be submitted:

- A. The specific hourly increase being requested by category of employee;
- B. Any additional fringe benefits if proposed and cost of such benefits;
- C. A calculation of the total increased cost divided by prior years total patient days to convert to additional per them cost.

## 7210.8 Basis for granting adjustment

- A. Approval of an increase in the per diem rate to adjust wages will be based on the following considerations, whether:
  - 1. The facility has increased the average hourly wages for each category of staff at a rate that is at least equal to the inflation index computed by Data Resources, Inc. (DRI);
  - 2. Fringe benefits of vacation and sick leave are reasonable and comparable to those of other businesses in the area which employ the same labor pool, and whether those benefits were as much as or greater than they were in the base year;
  - 3. The facility's wages are generally below wage levels in comparable facilities;
  - 4. Staffing has not been in accordance with approved staffing ratios or has not met minimum standards due to inability to recruit qualified staff to fill positions;
  - 5. There is evidence of bona fide efforts to recruit nursing/direct service staff;
  - 6. Turnover of staff has been at a consistently high rate;

7. There has been high usage of temporary or "pool" employees;
  8. There are highly competitive labor market conditions as evidenced by the unemployment rate for the area;
  9. Opportunities for training and opportunities to advance skills have been offered;
  10. The facility has experienced a financial loss on Medicaid clients related to staffing costs.
- B. An adjustment may be denied if the Department establishes any one of the following:
1. The average hourly wages by category of staff have not been increased in accordance with the inflation index computed by Data Resources, Inc. (DRI);
  2. The facility has failed to demonstrate that there have been retention and recruitment problems;
  3. The average hourly wages by category of staff which are built into the facility's rate of reimbursement exceed the average hourly wages by category of staff employed by long-term care facilities in the same geographic region.
  4. The facility has failed to take necessary and reasonable administrative actions to identify and address factors leading to high turnover;
  5. There is sufficient evidence that management of the facility has permitted inefficient operation, has not been responsive to the need to correct problems or deficiencies identified or has not offered adequate training, supervision and staff support to nursing staff employed in the facility;
  6. There has been a profit on MaineCare members resulting in a substantial "savings" to the facility which has not been reinvested to address staffing problems.
- C. If the Department determines that an adjustment is needed to address serious problems of recruitment and retention of nursing/direct service staff, the adjustment may be for all or any part of the amount requested. Any adjustment will be limited to the difference between the amount approved under these rules and the amount built into a facility's rate of reimbursement through the annual DRI Inc. increases. (In other words, the adjustment under this rule is not intended to make up any difference between what a facility has actually paid its staff and what



is built into the facility's previously approved rate.) The Department may grant an adjustment for salary increases or for increases in paid vacation and/or holiday benefits and/or other benefits.

**7210.9 Effective date of adjustment**

- A. Any adjustment in the per diem rate will be effective the first day of the month following the submission of information to support the request for an adjustment.
- B. Depending upon the availability of funds, retroactive adjustments will be made to facilities who have granted reasonable wage increases, greater than the DRI inflationary factor, in order to deal with staffing shortages in the facility which were identified prior to the effective date of these rules.

**7210.10** All funds granted under this section are considered a supplemental allowance and as such any funds not expended for the purpose for which granted will be recouped in future audits.

**7300 Innovative Programs**

In order to encourage the development of innovative programs, practices or patient care techniques in ICFs for the mentally retarded, the Department will request proposals from facilities to demonstrate an innovative way to provide services to enhance the quality of life of the members.

**7310 Funding**

The amount of funds available for these projects is subject to the determination by the Department. Upon approval of a project, the per diem rate will be adjusted in the form of a supplemental rate limited in duration to the length of the project.

**7320 Criteria for Approval of Services**

Only those costs of innovative projects that directly benefit the members and their care will be eligible for funding. The costs must meet the standards in Section 1000 of these Principles of Reimbursement, but can be used to expand the scope of some services, change method of delivering the service, or some other innovative use of funds, and must benefit the facility.

**7330 Selection of Projects**

The Department will establish an Advisory Committee representing professional associations, the Bureau of Mental Retardation, Advocates for the Developmentally Disabled and other interested parties to review proposals for innovative projects and make recommendations to the Department. Final approval for funding will be the responsibility of the Department.

## 7340 Evaluation of Projects

Quarterly reports on a form approved by the Department are to be submitted for each project within 15 days of the end of each quarter. Upon receipt of the third quarter reports a summary of the quarterly reports is to be prepared and distributed to the Advisory Committee. This Committee will be convened at least 45 days prior to the end of the funding year for the Innovative Projects to review the quarterly reports and determine which of the following actions should be taken:

- 1) Funding for the project should not be continued;
- 2) The project should be funded for a second year;
- 3) The project should become an ongoing program for this facility and continued as part of the per diem rate; or
- 4) A recommendation should be made to the Bureau of Medical Services, Department of Human Services to include this project as an allowable cost for all general ICF/MR Facilities.

A project may be funded as an Innovative Program for no more than two years.

## 7400 Retroactive Adjustment for Food, Fuel, and "Other" Expenses

After the first prospective year, the department will make a retroactive adjustment for the increase in the costs of food, fuel and "other" expenses (excluding wages and employee benefits) if the actual inflation for those items is more than 1% greater than the projected inflation for those items at the time the prospective rate was set. This will be done as follows:

DRI contracts a nursing home market basket of routine services which includes the following elements and their weights\* in the index.

Wages and salaries	.599
Employee benefits	.085
Food	.091
Fuel and other utilities	.057
Other expenses	<u>.169</u>
	1.001

Assume the following projected and actual inflation in the non-salary and employee benefits categories: